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JAN 08 2007

OFFICE OF PETITIONS

In re Application of :  
Blendermann : DECISION ON PETITION  
Application No. 10/075,221 :  
Filed: November 13, 2002 :  
For: PROPRIOCEPTIVE DEVICE THAT :  
CONTAINS NUTRIENTS FOR THE  
TREATMENT OF STRATURAL DISEASES

This decision is in response to the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181 filed October 2, 2006 and supplemented October 24, 2006.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned March 20, 2004 for failure to timely submit a proper reply to the final Office action mailed October 19, 2004. Notice of Abandonment was mailed May 4, 2005.

Petitioner continues to argue that a timely response (along with a petition for two-month extension of time) was timely submitted March 31, 2005.

Petitioner is advised that the response submitted March 31, 2005 is deemed untimely.

The final Office action, mailed October 19, 2004, set a three-month shortened period of time for reply, making a response due on or before January 19, 2005. The period of time for reply was extensible up to three months, or April 19, 2005, provided a timely petition for extension of time and required fee were submitted.

A response to the final Office action was submitted November 18, 2004. The response, however, failed to place the application in condition for allowance, as indicated in the Advisory Action mailed February 2, 2005.

The Advisory Action further indicated that the period of time to respond to the final Office action expired as of the mail date of the Advisory Action (February 2, 2005) or the date set in the final Office action, whichever sets forth the later period of time for reply.

The period of time for calculation of extensions of time is based on the time period for reply set forth in the final Office action, which set forth a three month shortened statutory period of time for reply and permitted up to three months additional time to reply, provided the appropriate petition and fee for extension of time were submitted.

Accordingly, the reply submitted March 31, 2005 required a three-month extension of time, to extend the period of time for reply from January 19, 2005 to April 19, 2005. As only a two-month extension of time was submitted, the application went abandoned.

Extensions of time are not calculated from the mail date of the Advisory Action.

Even assuming arguendo that the March 31, 2005 reply were deemed timely, the application would still be abandoned as the reply submitted March 31, 2005 was not deemed a proper reply to the final Office action, as indicated in the Notice of Abandonment mailed May 4, 2005.

Furthermore, the application was deemed abandonment for failure to submit required claim fees. As to petitioner's contention that no claim fees are due, petitioner must make inquiry with the examiner of record as the undersigned is not authorized to calculate claim fees.

#### **ALTERNATE VENUE**

Petitioner is strongly urged to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a

showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

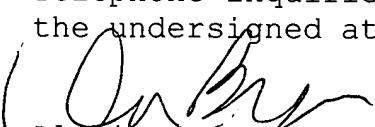
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
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By facsimile: (571) 273-8300

By hand: U.S. Patent and Trademark Office  
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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



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